

## REMARKS

Claims 1-12 are pending in the present application and all stand rejected. The Applicants request reconsideration of the rejections based on the following comments.

Claims 1, 2, 4 and 5 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Nelson (U.S. Patent No. 2,862,255). The Applicants respectfully traverse this rejection based on the following comments.

The Office action asserts that Nelson discloses the claimed flooring plank of claim 1. In particular, the Office action asserts an interpretation that the wood boards 15 of Nelson correspond to the claimed first layer of a plurality of strips and that the spaced sleepers 12 correspond to the claimed second layer of a plurality of spaced strips. Nelson, however, teaches an entire floor construction having a floor 14 comprised of a plurality of wood boards or "planks" 15 that are, in turn, mounted on sleepers 12 that are mounted on spacers 13 resting on a concrete slab 11. Nowhere does Nelson teach or suggest actual flooring planks having first and second layers as featured in claim 1. The specific wood boards or "planks" 15 of Nelson are merely shown as a single layer construction.

Moreover, the specific rejection proffered in the present Office action appears to completely disregard the preamble of claim 1 clearly reciting a "plank" and not an entire floor construction. As clearly mandated in § 2111.02 of the M.P.E.P "[a]ny terminology in the preamble that limits the structure of the claimed invention must be treated as a claim limitation." Further, this same section also states that "if the claimed preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claimed preamble is 'necessary to give life, meaning and vitality' to the claimed invention, then the claimed preamble should be construed as if in the

balance of the claim.” The recitation of a “flooring plank” in the preamble is a clear example of the situation referred to in the above-referenced sections of the MPEP where the preamble terminology limits the structure of the claimed invention. Thus, the Patent Office is not free to simply disregard that the claimed invention is a flooring plank and not an entire floor construction. Accordingly, Nelson cannot anticipate claim 1 since, as mentioned previously, no flooring planks are disclosed having the claimed features. Furthermore, the interpretation given in the present Office action including wood boards 15 as the first layer of a plurality of strips and sleepers 12 as the second layer of a plurality of spaced strips that together comprise a “flooring plank” is an unreasonable interpretation of both claim 1 and the actual teachings of Nelson.

A further directive of § 2111 of the M.P.E.P is that claims must be given their broadest reasonable interpretation consistent with the specification. As mentioned above, since the preamble of claim 1 provides structure to the claimed invention, any reference that might anticipate this claim must teach a flooring plank having the claimed elements and not an entire floor construction. Moreover, § 2111 also mandates that the broadest reasonable interpretation of claims must be consistent with the interpretation that those skilled in the art would reach. The Applicants respectfully submit that those skilled in the art would not interpret claim 1 to cover an entire flooring construction. Conversely, it can also be viewed that one skilled in the art would also not reasonably read Nelson as teaching a specific flooring plank construction having the features of the plank of claim 1.

Additionally, the Office action asserts that Figure 1 of Nelson illustrates that the wood grain of the planks 15 extend in the longitudinal direction of the planks and that the grain of the sleepers 12 is transverse to the direction of the grain of the planks

15. Notwithstanding, the specification of Nelson does not give any explicit teaching of grain directions. Further, the M.P.E.P does not provide guidance as to a standard nomenclature or symbol that is used to indicate the direction of wood grain. Thus, the mere choice in Nelson to show shading in a particular direction is not tantamount to an explicit teaching that the wood grain actually extends in the same direction as the shading. Furthermore, Figure 3 of Nelson could arguably characterize the showing grains for both the plank 15 and sleeper 12 having crossed hatching for both cross sections. Although § 2125 of the M.P.E.P explains that drawings and pictures can anticipate claims, they must nonetheless clearly show the structure which is claimed. Further, the drawings must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art. The Applicants respectfully submit that the drawings of Nelson do not reasonably disclose and suggest a particular construction of first and second layers of a flooring plank having grains transverse to one another.

In light of the foregoing comments, the Applicants respectfully request reconsideration and withdrawal of the rejection of claim 1.

With respect to the pending claims 2, 4 and 5, the Applicants submit that these claims are believed allowable at least by virtue of their dependency upon claim 1.

Claims 3 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson in view of Burland (U.S. Patent No. 3,509,234). The Applicants submit that these claims are believed allowable at least by virtue of their dependency upon independent claim 1, discussed previously.

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Nelson in view of Chen et al. (U.S. Patent No. 6,291,078). The Applicants respectfully submit that this claim is allowable at least by virtue of its dependency upon independent claim 1.

Claims 8-12 were rejected under § 103(a) as being unpatentable over Nelson in view of Burland and further in view of Wu. The Applicants respectfully traverse this rejection based on the following reasons.

With respect to independent claim 8, as discussed previously with respect to claim 1, the teachings of Nelson do not teach or suggest the claimed flooring plank when consideration is given to the structure afforded by the preamble of the claim according to proper examination procedure. Accordingly, as discussed previously with respect to claim 1, Nelson does not disclose the features of claim 8.

Furthermore, the Burland and Wu references do not cure the deficiencies of Nelson by teaching a flooring plank featuring first and second layers with grains transverse to one another. Accordingly, the Applicants respectfully submit that the cited prior art, either combined or separate, does not teach or suggest all of the elements of claim 8 and the rejection of this claim should be withdrawn accordingly.

With respect to claims 9-12, the Applicants respectfully submit that these claims are believed allowable at least by virtue of their ultimate dependency upon independent claim 8.

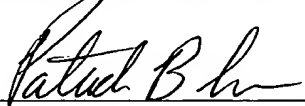
**CONCLUSION**

In light of the foregoing comments, the Applicants respectfully submit that the application is in condition for allowance and request a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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